IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 17103 of 2004

Between:

M/s. Kumar's Cotex Limited., Regd. Office and Factory at Dokiparruvillage, Medikonduru Mandal, Guntur District A.P. and Corporate Office at 6-3-855/10/A, IB Sampathiji Apartments, Ameerpet, Hyderabad 500 016 rep by Managing Director Sri Anil Kumar Aggarwal

..... PETITIONER

AND

1 The Chairman & Managing Director, APSPDCL, Renigunta Road, Tirupathi
2 The Superintending Engineer (Operation Circle), APSPDCL, Guntur
3 The Sr. Accounts Officer, APSPDCL, Guntur

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of writ of Mandamus by declaring action of the respondent in rejecting the representation dated 13-09-2004 of the petitioner orally on 20-09-2004 as illegal, arbitrary, unreasonable and consequently directing the respondents to grants 20 equal monthly installments with effect from October, 2004 for the entire arrears up till date of Rs. 56,87,000/-.

Counsel for the Petitioner : MR. K.V.SIMHADRI

Counsel for the Respondents: Smt. M.Vinobha Devi, SC for APSPDCL

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.17103 OF 2004

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ORDER :

The petitioner Company claims to be a Cent Percent Export Oriented Unit for the manufacture of Cotton Yarn. It is stated that a reference under Section 15 of Sick Industrial Companies (Special Provisions) Act, 1985 was made to the BIFR and subsequently against the order of the Board, an Appeal was preferred and the same is pending before the AIFR. It is further stated that since there was no Working Capital available in addition to slack in the business the petitioner could not pay the electricity charges as demanded from June, 2004 onwards. As such, the petitioner Company sought for re-schedulement of electricity charges and the 1st respondent vide letter dated 22-07-2004 rescheduled the bills payable upto July, 2004. As per the reschedulement, a sum of Rs.12,77,431/- has to be paid by 30-07-2004 and the next installment of Rs.10,92,918/- has to be paid by 30-08-2004. The further

installment of Rs.12,20,327/- requires to be paid by 30-09-2004. The petitioner states that while granting the reschedulement the balance installment of Rs.6,77,431/- in respect of July, 2004 and the regular bill of Rs.11,84,000/- was not included and as such in addition to the amounts payable as per the reschedulement certain further amounts were also due and thus a total sum of Rs.70,05,700/- was found to be in arrears. In the circumstances, the petitioner by letters dated 1-9-2004 and 3-9-2004 requested for grant of further installments. The 1st respondent by letter dated 8-9-2004 permitted the petitioner to pay the said amount towards the arrears upto August, 2004 in two installments. Immediately, the petitioner paid a sum of Rs.15,00,000/- on 13-09-2004. However, the balance of Rs.14,55,026/- payable by 23-09-2004 could not be paid since the Company could not operate the Bank account in view of certain orders from the City Civil Court. Therefore, the petitioner Company addressed a letter dated 13-09-2004 requesting the first respondent to grant 20 installments for payment of the arrears. However, the 1st respondent failed to consider and orally expressed that the request of the petitioner has been rejected. Hence, this writ petition seeking a Writ of Mandamus declaring that the action of the respondents in rejecting the representation of the petitioner dated 13-09-2004 as arbitrary and illegal and consequently to direct the respondents to grant 20 equal monthly installments with effect from October, 2004 to clear the arrears till date to the tune of Rs.56,87,000/-.

On behalf of the respondents, a counter-affidavit has been filed denying all the allegations made by the petitioner. It is stated that from the date of release of supply, the petitioner was irregular in payment of monthly consumption charges and has been seeking installments. Though the first respondent has considered the request of the petitioner and granted installments, the petitioner instead of paying the amounts sanctioned, has again approached the first respondent on 10-07-2004 requesting for reschedulement of the installments for payment of Rs.51,43,592/-. The first respondent again granted installments, but the petitioner failed to pay the installments even as per the reschedulement. It is further stated that against the installments due by 30-07-2004 for a sum of Rs.12,77,431/- the petitioner issued a cheque for Rs.6,77,431/- and sought for extension of time for the balance upto 21-08-2004. However, the cheque was dishonoured on the ground of 'Insufficient funds'. In spite of the same, the 1st respondent has considered the request of the

petitioner from time to time and granted installments and again reschedule the installments. However, the petitioner failed to pay the same and has been repeatedly making representations every time for installments / reschedulement of installments without making any payment. The plea of the petitioner that its business is crippled has been denied. In the circumstances, the request of the petitioner dated 13-09-2004 for grant of 20 installments has been rejected in view of the inadequate security deposits available with the respondents.

I have heard the learned Counsel for the petitioner and the learned Standing Counsel appearing for the respondents.

The learned Counsel for the petitioner submitted that the petitioner is always willing to clear the entire arrears and the request is only for granting reasonable time by rescheduling the installments. The learned Counsel further contended that since the first respondent has accepted similar request of some other consumers and granted installments, the rejection of the request of the petitioner is not justified.

On the other hand, the learned Standing Counsel contends that the petitioner is a habitual and chronic defaulter and having regard to the conduct of the petitioner in repeatedly committing default in payment of the consumption charges, the 1st respondent has rightly refused to grant further installments as sought by the petitioner.

In the light of the averments in the counter-affidavit, it is clear that the request of the petitioner for grant of installments and also for reschedulement of the installments has been considered by the first respondent from time to time. However, the petitioner could not make the payments even as per the reschedulement of installments dated 22-07-2004. It is to be noted that the petitioner in its letter dated 1-9-2004 sought time for payment of a total sum of Rs.29.54 lakhs which includes Rs.6.7 lakhs towards the balance payment, Rs.11.84 lakhs towards the consumption charges under the regular bill and Rs.10.92 lakhs towards the installment payable by 30-07-2004. The petitioner itself agreed that out of the said Rs.29.54 lakhs, a sum

of Rs.15 lakhs will be deposited immediately and the balance of Rs.14.54 lakhs will be paid positively on 15-09-2004. The first respondent, having considered the said request, permitted the petitioner to pay a sum of Rs.15 lakhs immediately and the balance of Rs.14.54 lakhs by 23-09-2004. It appears that the petitioner having paid the 1st installment of Rs.15 lakhs, obtained restoration of power supply, but again has come up with another request on 13-09-2004 to grant 20 equal installments for payment of the remaining installments amounts as per the reschedulement granted on 22-07-2004 and also the installment of Rs.14.54 lakhs payable by 23-09-2004.

I am unable to hold that the action of the 1st respondent in refusing to consider the said request of the petitioner is either arbitrary or illegal. The petitioner having availed the power supply is bound to pay the consumption charges. As a matter of fact, the respondents in their counter-affidavit denied the claim of the petitioner that its business is crippled. In spite of the fact that the petitioner has been repeatedly making requests, the 1st respondent has shown indulgence and granted reschedulement of installments number of times. In the circumstances, it cannot be said that the respondent failed to exercise the discretion nor can it be said that the respondent has acted in breach of any statutory obligation. Since the matter does not involve enforcement of any legal right, no Mandamus can be issued as sought by the petitioner compelling the respondents to grant 20 monthly installments.

The learned Counsel for the respondents states that as on today not only the sum of Rs.14.55 lakhs payable by 23-09-2004 is due, but the petitioner also failed to pay a further sum of Rs.12.20 lakhs payable by 30-09-2004 as per the reschedulement granted on 22-07-2004. Thus, a total sum of Rs.26.75 lakhs is due as on today. In the circumstances, the Writ Petition is disposed of permitting the petitioner to pay the said sum of Rs.26.75 lakhs in two equal installments, the 1st installment shall be paid by 11-10-2004 and the 2nd installment shall be paid by 18-10-2004. This is in addition to the amounts that are payable by 30-10-2004 onwards as per the reschedulement granted on 22-07-2004. It is also made clear that in case the petitioner commits any default, it is open to the respondents to take the appropriate proceedings in accordance with law.

Writ Petition is accordingly disposed of. No costs.

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4th October, 2004.

Gbs

To

1 The Chairman & Managing Director, APSPDCL, Renigunta Road, Tirupathi
2 The Superintending Engineer (Operation Circle), APSPDCL, Guntur
3 The Sr. Accounts Officer, APSPDCL, Guntur

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